

ENTERED

April 13, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

SALVADOR ZAVALA, §
§
Plaintiff, §
VS. § CIVIL NO. 2:17-CV-285
§
MARTINEZ MIGEL, *et al*, §
§
Defendants. §

ORDER

The Court has received the Magistrate Judge's October 31, 2017, Memorandum and Recommendation ("M&R"), Dkt. No. 15, Plaintiff's objections to that M&R, Dkt. No. 22, Defendants' Motion to Dismiss, Dkt. No. 23, and the Magistrate Judge's February 14, 2018, M&R, Dkt. No. 25, to which no party has objected.

After independently reviewing the record and applicable law, the Court **ADOPTS** both M&Rs, Dkt. Nos. 15,¹ 25. Accordingly, the Court:

- **RETAINS** Plaintiff's claims against former McConnell Unit Warden Miguel Martinez and Sergeant Darren Mayer;
- **DISMISSES** Plaintiff's claims for money damages against all Defendants in their official capacities as barred by the Eleventh Amendment;
- **DISMISSES** Plaintiff's claims against the remaining Defendants for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1);

¹ The October 31, 2017, M&R describes a separate habeas case that Plaintiff was pursuing in this Court and references an October 3, 2017, M&R that was pending in the habeas case at the time. Dkt. No. 15 at 5. The Court notes that it adopted that M&R and dismissed Plaintiff's habeas case on January 5, 2018. *Zavala v. Davis*, Case No. 2:17-CV-122, Dkt. No. 26 (S.D. Tex. Filed on Mar. 31, 2017).

- **DENIES IN PART** Defendants' Motion to Dismiss, Dkt. No. 23, on the basis that Plaintiff has stated plausible due process claims against them; and
- **GRANTS** Defendants' Motion to Dismiss, Dkt. No. 23, to the extend that Plaintiff (1) is limited to recovering compensatory damages in the amount of \$225.00, the amount forfeited from his account; and (2) is not entitled to recover additional compensatory damages arising from mental or emotional distress.

This case will therefore continue to proceed before the Magistrate Judge.

SIGNED this 13th day of April, 2018.



Hilda Tagle
Senior United States District Judge